IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 649 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMAD MEHBUB SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 649 of 1998

MR PM VYAS for appointed advocate for appellant

MR KC SHAH APP for Respondent

CORAM : MR.JUSTICE A.M.KAPADIA
and
MR.JUSTICE H.H.MEHTA

Date of decision: 25/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. The appellant ('the accused' for short) was charged and tried by the learned Additional City Sessions Judge, Court No.23, Ahmedabad, in Sessions Case No.227 of 1997 for commission of the offence under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the NDPS Act" for short) arraigned on charge of having been found with contraband article brown-sugar when he was apprehended by Ravindrakumar Kashiram Bhatt, P.W.1, on the basis of a secret information received by him. At the end of the trial, the accused has been held guilty of the offence with which he was charged, therefore, convicted vide judgment and order dated June 23, 1998 and sentenced to undergo R.I. for ten years with fine of Rs.1 lac and i.d., to undergo further R.I. for one year.

2. Aggrieved thereby the accused has filed this appeal with the aid of Section 374 of the Code of Criminal Procedure, through jail.

3. Briefly stated, the prosecution case is that:

3.1. On August 13, 1997, at 3.P.M. Ravindrakumar Kashiram Bhatt, P.W.1, a Police Inspector working in C.I.D. Crime, Narcotic Branch, received a secret information that Mohmad Mehbub having put on printed shirt and ash coloured pantaloon is selling brown-sugar near Kalupur Castle wall. P.W.1, therefore, recorded the said secret information in his register (Ex.9). He also informed his superior officer, in writing, about the secret information received by him (Ex.10). Thereafter he called two persons to act as Panchas through Head Constable Arjunsinh. He informed the Panchas and police staff about the secret information received by him. He prepared preliminary panchnama and thereafter proceeded with the panchas and police personnel in his vehicle towards Kalupur area for the purpose of raid. He stopped his vehicle near shop of Wagh-bakri tea near Kalupur circle. He saw a person was standing near hand-cart of biscuits whose description tallied with the secret information received by him. He, therefore, with the help of police personnel and panchas, intercepted and apprehended him. He verified his name. Thereafter the said person was appraised of his right and given option to be searched before a gazetted officer or Executive Magistrate. The said person did not exercise the option and thereafter he was searched by P.W.1 in the presence of Panchas. During the search, one plastic bag from his

right side pocket of pantaloon was found. It was containing 12 small packets of white and coloured papers. On opening the said packets it was found that those packets contained brown coloured powder. On verification it was found to be brown-sugar. The said small packets were put in a plastic bag and it was weighed in the presence of panchas and it was weighing 3 grams and 500 milligrams. Thereafter it was sealed with the slip of two panchas and the Police Inspector and a panchnama was prepared accordingly. The person who was found with the contraband article was arrested and he was informed about the ground of his arrest. His house was searched but no incriminating article was found from there. P.W.1 thereafter produced him alongwith the sealed muddamal article before the Kalupur Police station and he filed complaint against him in the said police station for commission of the offence under section 21 of the NDPS Act.

3.2. Pursuant to the filing of the complaint, investigation was put into motion. During the course of investigation statements of witnesses including police personnel were recorded. The muddamal article was sent to Forensic Science Laboratory ('FSL" for short) for analysis and on receipt of the report thereof it was found to be brown-sugar. Therefore, charge-sheet was filed against the accused for commission of the offence under section 21 of the NDPS Act in the City Sessions Court, Ahmedabad where the charge was framed against him for commission of the said offence to which he pleaded not guilty and claimed to be tried and, therefore, he was put to trial in Sessions Case No.227 of 1997.

3.3. To prove the culpability of the accused, the prosecution, in all, has examined 8 witnesses including panch No.1 and relied upon their oral testimonies. The prosecution has also produced 19 documents upon which reliance was placed.

3.4. At the end of the trial, the learned Additional City Sessions Judge recorded the finding that Ravindrakumar Kashiram Bhatt, P.W. 1 has complied with the statutory requirements contained under the NDPS Act during search and seizure and the panch has also supported the case of prosecution, therefore, charge against the accused has been proved, resultantly, recorded the order of conviction and sentence to which reference is made earlier, which has given rise to the present appeal.

4. We have heard Mr. P.M. Vyas, learned advocate

who has been appointed to render assistance to the accused and Mr. K.C. Shah, learned APP on behalf of the respondent - State. We have also perused the impugned judgment and order of conviction and sentence and the set of evidence and R. & P. of Sessions Case No.227 of 1997.

5. At the outset be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder. In this connection, it would be appropriate to refer to the observations made by the Supreme Court in the case of Bharatbhai Bhagwanjibhai v. State of Gujarat, AIR 2003 SC 7. In para 1 of the said judgment, the Supreme Court has observed as under:

> "The Statement of Objects and Reasons of the NDPS Act categorically records the inadequacy of the existing legislation to combat illicit drug traffic and drug abuse, both at the national and international levels and it is by reason of such deficiencies in the existing laws, the legislature thought it prudent to consolidate the same and bring about a comprehensive legislation so as to meet the exigencies of the situation. A plain look at the provisions of the NDPS Act read with the Statement of Objects and the Preamble would depict the intent of legislature as regards the offences under the said consolidated legislation, which stands expressed in rather explicit language as one of the most heinous ones in nature. This Court, however, in consonance with criminal jurisprudence of the country has been insisting on strict compliance of the safeguards provided under the statute so as to be in tune therewith".

6. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Supreme Court in the above referred to judgment, we have to find out as to whether in the instant case strict compliance of the safeguards provided under the statute have been observed by the Police Inspector during the course of raid and search of the accused and seizure of the muddamal, contraband article - brown-sugar.

7. In this connection, we shall refer to ocular testimonies of witnesses of the members of the raiding party including the complainant P.W.1. The prosecution has examined Ravindrakumar Kashiram Bhatt, P.W.1 (Ex.8), Natvarsinh Shamalsinh Jhala, P.S.O. P.W.3 (Ex.24), Rumalji Shivaji, Writer Head Constable, P.W.4 (Ex.27), Ramjibhai Savjibhai Katara, Police Constable, P.W.5 (Ex.29), Vijaysinh Laxmansinh Chauhan, Police Inspector, P.W.6 (Ex.31), Harjitsinh Joravarsinh Parmar, Head Constable, P.W. 7 (Ex.32) and Lalitprasad Bhavarilal Purohit, Police Sub Inspector, P.W.8 (Ex.33) to establish the case against the accused and all of them have unequivocally stated the role played by each of them. Ravindrakumar Kashiram Bhatt, P.W.1, stated that he has reduced the secret information received by him into writing (Ex.9). He has also stated that he has conveyed the said information to his superior officer - Dy.S.P. (Ex.10). He has also apprised the accused of his right to be searched before a Gazetted Officer or an Executive Magistrate and gave him option to be exercised (Ex.11). However, the accused did not exercise the said option and said that he did not want himself to be searched either before the Magistrate or a Gazetted Officer. Thereafter he made a report of the arrest of the accused and seizure of the contraband article brown-sugar from him, to Superintendent of Police (Ex.18). P.W.1 withstood the test of cross-examination and nothing adverse to the prosecution case was found from his deposition which can be of any help to the accused. From the aforesaid evidence it can be concluded that P.W.1 has fully, completely and meaningfully complied with all the statutory provisions under Sections 41, 42, 50 and 57 of the NDPS Act.

8. So far as the seizure and sealing of muddamal article is concerned, averting to the evidence of Ramanbhai Amrabhai Patel, P.W.2 (Ex.22) who is a panch witness, it is undoubtedly established that when the accused was intercepted by them, from the pocket of the pantaloon of the accused, 12 packets weighing 3 grams and 500 milligrams containing brown sugar were found and in his presence necessary formalities of sealing were performed. In cross-examination the Panch has unequivocally stated that in his presence Police Inspector, P.W.1 has appraised the accused about his right of the search to be made in presence of a gazetted officer or a Magistrate and he was given option accordingly. He further stated that the accused did not exercise that option and said that he did not want himself to be searched either before a gazetted officer

or a Magistrate.

9. Besides this, on having look at the report of the FSL (Ex.35), it is clear that the said contraband article contained di-acetyl morphine (heroin), Codeine, Acetyl Codeine, 6 Mono Acetyl morphine, Thebaine, Narcotin and Pepavarine. Therefore, there appears to be no manner of doubt that the contraband article was brown-sugar.

10. In view of the aforesaid evidence there is no manner of doubt that when the accused was intercepted, apprehended and searched, he was found to be in possession of the contraband article - brown-sugar. Necessary formalities of search and seizure were made in the presence of Panchas who have supported the prosecution version and P.W.1 has complied with the requirements and observed all the formalities contained under Sections 41, 42, 50 and 57 of the NDPS Act.

11. On having close scrutiny of the evidence, we find no infirmities in the findings, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Additional City Sessions Judge. We are in complete agreement with the said findings, ultimate conclusion and resultant order of conviction and sentence as according to us no other conclusion is possible except the one reached by the learned Additional City Sessions Judge.

12. No new argument is advanced. No new criticism is offered. No infirmity in the reasoning of the learned Special Judge is pointed out. The evidence has been carefully analysed and fully appreciated in the closely reasoned judgment with which we fully concur. We do not think it right to invest public time in reiterating the same reasoning in our language or giving the same answers to the same criticism in our own words for the sake of form.

13. In aforesaid view of the matter, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. The sentence awarded to the accused is minimum and has to be maintained.

14. On the wake up of the aforesaid, we are not inclined to interfere with the judgment and order of conviction and sentence recorded by the learned Additional City Sessions Judge and hence this appeal lacks merits deserves to be dismissed.

15. For the foregoing reasons, the appeal fails and accordingly it is dismissed.

(A.M. Kapadia, J.)

(H.H. Mehta, J.)

(karan)